



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: International Household Goods Forwarders -
Supplemental Claims - Statute of Limitations
File:
Date: B-224046
September 25, 1987

DIGEST

Forwarders' supplemental bills for single factor ocean rate adjustments were received in the General Services Administration (GSA) more than 3 years after delivery and original payment dates. They are not barred from consideration and payment by the GSA where, under the Military Traffic Management Command's (MTMC) rate adjustment procedures, forwarders' claims do not accrue until MTMC approves forwarders' requests for adjustment, and under GSA's regulations claims are "received" when received either by GSA or by the agency out of whose activities the claims arose. The forwarders' claims were received in GSA within 3 years of the dates on which MTMC approved the rate adjustments, and MTMC received the requests for rate adjustments within 3 years of the original payment dates.

DECISION

A certifying officer of the General Services Administration (GSA)^{1/} requests an advance decision to resolve doubts concerning the question of whether the agency is barred by 31 U.S.C. § 3726 (1982), a statute of limitations, from settling certain claims for ocean rate adjustments received from international household goods forwarders. We conclude that the claims are not barred since they were received within 3 years of the dates on which they accrued.

BACKGROUND

Supplemental bills have been submitted by certain household goods forwarders more than 3 years after delivery and original payment to the forwarders for International Through Government Bill of Lading (ITGBL) movement of several household goods shipments. The claims are based on adjustments approved by the Military Traffic Management

^{1/} Michael D. Hipple, Director, Transportation Audit Division, GSA.

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Command (MTMC) for increases in underlying ocean transportation rates. The increases occurred subsequent to the forwarders' submission of single factor rates intended for application during MTMC's 6-month acquisition periods, known as "volumes," on ITGBL household goods shipments. The claims were received well within 3 years of the adjustment approval dates but more than 3 years after the original bills had been paid.

Under 31 U.S.C. § 3726(a), the forwarders' initial bills were paid upon presentation prior to audit by GSA. Subsequent claims for additional amounts are subject to the limitation period prescribed by the statute. There are four potential events that can trigger running of the 3-year limitation period for receiving claims in GSA. These are prescribed in section 3726(a) which provides in part:

" * * * A claim under this section shall be allowed only if it is received by the Administrator [of General Services] not later than 3 years (excluding time of war) after the later of the following dates:

"(1) accrual of the claim;

"(2) payment for the transportation is made;

"(3) refund for an overpayment for the transportation is made; or

"(4) a deduction under subsection (b) of this section is made."

In this case no deduction or refund occurred and there is no disagreement that the supplemental bills in dispute were received in GSA more than 3 years after payment of the original bills.

MTMC nevertheless urges payment of the claims on the theory that, under section 3726(a)(1), the claims accrued when MTMC approved the forwarders' requests for adjustments under the agency's ocean rate adjustment program.

Under MTMC's ocean rate adjustment program^{2/} forwarders submitted single factor rates based on underlying ocean rates in effect on a particular date, known as a "pegged quotation date," prior to a prospective contract period, or "volume." Where qualifying increases in ocean transportation rates occurred after the rates were submitted, forwarders were required to furnish specified information to MTMC with their requests for adjustment within 60 days of the Volume's expiration date. MTMC reserved the right to approve or disapprove the requests depending on whether they satisfied administrative criteria. If approved, adjustments were retroactively authorized by publication of a new item in the forwarders' applicable tender covering the period during which they were liable for payment of the increased ocean rates. MTMC states that the approval procedure required substantial time to complete.

GSA's report contains an illustration of how the question of untimeliness arose. A forwarder picked up a shipment on September 29, 1982, which was within the 6-month period of Volume 44, April 1, 1982-September 30, 1982. The goods were placed on board the ocean vessel on November 8, 1982, which was after Volume 44 expired and after the ocean carrier's rate increased on November 1, 1982. The forwarder's agent requested MTMC to approve an adjustment on November 29, 1982, but MTMC denied the request on December 8, 1982. MTMC disapproved the adjustment request for the reason that adjustments for Volume 44 did not apply to shipments picked up before the end of the Volume and loaded on a vessel subsequent to the end of the Volume based on increased costs instituted after the Volume had closed. The forwarders again sought adjustments which also were rejected.

The forwarders took no further action to dispute MTMC's position until August 3, 1984, when a complaint (No. 399-84C) was filed in the United States Claims Court. The complaint was filed by the Household Goods Forwarders Association of America, Inc., on behalf of itself and five

^{2/} The ocean rate adjustment program was part of MTMC's ITGBL procurement system in the early 1980's, but has since been discontinued.

member carriers seeking payment of specific dollar amounts based on increases in underlying ocean transportation rates which became effective after the pegged quotation date and which applied to Volume 44 shipments.

In early 1985, however, the plaintiffs requested that the action be dismissed, presumably because the government had agreed to approve the requests for adjustment. The suit was dismissed with prejudice, and on April 5, 1985, and June 5, 1985, MTMC formally approved requested adjustments for application to various traffic channels. The forwarders then published tender supplements increasing the single factor rates retroactively to the dates covering the relevant shipments. Supplemental bills, which were based on the approved tender supplements, were not filed in GSA until 1986, more than 3 years after payment for the transportation, which had occurred in 1982, and more than 3 years after delivery. Clearly, however, the bills were received in GSA within 3 years of the date of MTMC's approval, which occurred in April and June 1985.

OPINION

There are two alternative legal bases supporting our conclusion that the GSA is not barred from considering the claims: (1) they accrued within 3 years of receipt by GSA, and (2) they were received by GSA's designee within 3 years of payment.

We are persuaded by MTMC's contention that the forwarders' claims did not accrue until their requests for rate adjustments were approved by MTMC, which occurred on April 5 and June 5, 1985. Since the claims, based on the approved adjustments, were received in 1986, they clearly were received within 3 years of accrual. The legal premise for adopting this view is the general rule that a claim does not accrue until the claimant has the right to demand payment. See Nager Electric Co., Inc., v. United States, 368 F.2d 847 (Ct. Cl. 1966) and Fattore, v. United States, 312 F.2d 797 (Ct. Cl. 1963). And the right to demand payment does not arise until all events have occurred which fix the liability of the United States. Fattore v. United States, supra; B-208856, November 4, 1982.

Here, the parties agreed to the application of a very detailed adjustment procedure under which MTMC reserved the

right to determine whether to approve adjustments and authorize payments. The procedures required forwarders to submit formal requests for MTMC consideration and approval of rate adjustments. Required with the requests was substantial information, including -- in addition to basic data, lists of alternate ocean carriers, schedules and rates--a showing that the requested adjustments represented a change in costs to the forwarders of not less than 2.5 percent; that the underlying rate increases became public knowledge after the pegged quotation date, and that no "viable underlying service" at the former rate level remained. Also required with requests were proposed rate tender items as they should appear in the tender, and copies of all relevant tariff pages of viable carriers showing increases or decreases since the pegged quotation date. Under these procedures all events necessary to fix liability of the United States did not occur until MTMC approved the adjustments. Upon approval and formal publication of tender supplements the forwarders had a right to demand payment. Only then did the claims accrue for purposes of starting the running of the 3-year limitation period in 31 U.S.C. § 3726(a).

Alternatively, even if the claims accrued upon delivery or payment of the original bills, GSA's regulations provide a reasonable basis for concluding that the claims were timely filed. Under 41 C.F.R. § 101-41.602(b) a claim is "received" within the meaning of 31 U.S.C. § 3726(a), when it is received by GSA or GSA's designee, that is, the agency out of whose activities the claim arose, within 3 years of the date of payment, among the other specified dates. Under 41 C.F.R. § 101-41.604-2(b)(4) agencies are expressly authorized to pay claims for single-factor ocean rate adjustments. Here, for example, the forwarders requests for adjustments can reasonably be viewed as claims and demands for payment which were received by MTMC, GSA's designee, in 1982, the same year in which the original payments were made.

Accordingly, since the forwarders' supplemental bills were received either by GSA or its designee within 3 years,

GSA is not barred by 31 U.S.C. § 3726(a) from considering the claims for payment.

for *Harvey R. Van Cleave*
Comptroller General
of the United States